BEFORE THE GOVERNING BOARD OF
THE CENTINELA VALLEY UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against: 36.06 Full Time Equivalent Certificated Employees of the Centinela Valley Unon High School District, Respondents.	OAH No. 2012030515

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on April 10, 2012, in Lawndale, California.

Carly A. Dadson, Esq., represented the Centinela Valley Union High School District (District). Also present was Candace Bandoian, Esq., and Bob Cox, Assistant Superintendent Human Resources.

Lawrence B. Trygstad, Esq., represented the Respondent teachers (Respondents). Also present was Sandra Goins, Executive Director, South Bay United Teachers.

The District served a Notice of Layoff and Accusation packets on Respondents. During the hearing, the parties resolved some of the issues by stipulation. The remaining Respondents whose employment remains at issue are listed on Exhibit D (Secondary teachers) and Exhibit E (Adult Education teachers), which are both incorporated by reference as if fully set forth herein. The District withdrew the Accusation as to Caryn Charles and Nathan Cooke. The matter was submitted for decision on April 10, 2012.

FACTUAL FINDINGS

1. Bob Cox, Assistant Superintendent of the District, acting in his official capacity, caused all pleadings, notices and other papers to be filed and served upon each Respondent pursuant to the provisions of Education Code sections 44949, 44955, and 44929.25 (adult education teachers). All pre-hearing jurisdictional requirements were met.

2. Respondents are employed by the District as permanent, probationary, intern, pre-intern, emergency permitted, waiver, and/or temporary certificated employees of the District.

3. On March 6, 2012, pursuant to Education Code sections 44949, 44955, and 44929.25 (adult education teachers) the Governing Board of the District (Board) issued Resolution numbers 11-12/022, 11-12/023, and 11-12/024 (tie-breaker criteria), which approved the recommendation by the Assistant Superintendent that notice be given to Respondents that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

4. Prior to March 15, 2012, Respondents were given written notice of the recommendation that notice be given to Respondents, pursuant to Education Code sections 44949, 44955, and 44929.25 that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

5. It was established that cause exists, within the meaning of Education Code sections 44949, 44955, and 44929.25 for not reemploying Respondents for the ensuing school year for all of the reasons set forth below.

6. The District decided the following:

The following particular kinds of services of the District will be reduced or eliminated no later than the beginning of the 2012-2013 school year:

PARTICULAR KINDS OF SERVICES	**NUMBER OF FULL-TIME EQUIVALENT (FTE) POSITIONS**
Secondary Teaching Services	18.6 FTE
Adult Education	17.46 FTE
TOTAL FTE REDUCTION	**36.06 FTE**

7. The Board decided that it is necessary to decrease the number of certificated employees as a result of the reduction in services. These services are "particular kinds of services" that may be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but rather, constituted a proper exercise of discretion. The Board

is faced with a budget shortfall. A detailed list of the particular kinds of services to be eliminated is stated in Exhibit 1, page D-1, which is hereby incorporated by reference as if fully set forth herein.

8. The reduction or discontinuation of these particular kinds of services is related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services is necessary to decrease the number of certificated employees of the District as determined by the Board. This reduction is necessary because of budget reductions.

9. The Board properly considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees prior to March 15, 2012. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627 at 636).

10. The District properly created its seniority list by determining the first date of paid service of each certificated employee and properly utilized reasonable "tie-breaker" criteria when necessary. The District "skipped" over certain specified categories of personnel as described in Exhibit D-2, which is hereby incorporated by reference as if fully set forth herein. Respondents did not challenge these "skips" of science teachers. Respondents did not challenge the lay-off process, as a whole, other than as discussed below.

Respondent DIS Counselors

11. The District provides services at three high schools, one "independent study" program, and one adult school. The District proposes to lay-off its only two Designated Instructional Services (DIS) counselors. These DIS counselors assist special education students with issues "beyond the classroom," such as legal, family, or other matters. Respondents contended that the District would be unable to perform, or that it would be very difficult to perform, mandated tasks required by state and/or federal law. The evidence presented was mixed. Assistant Superintendent Bob Cox testified that the services provided by the DIS counselors are "mandated." It was not established what law, or otherwise, mandates such services. Mr. Cox spoke with George Zuk in the Special Education department and Zuk told Cox that the District would still be able to provide the mandated services even after laying off the DIS counselors. This issue is a very close call. Mr. Cox had no personal knowledge regarding what act(s) the District would take to resolve this issue. Respondents established that the reductions will make compliance with the "mandates" difficult. However, Mr. Zuk's statement to Mr. Cox established, by a preponderance of the evidence, that the reductions in force will not prevent the District from providing the services at issue.

Assembly Bill 189

12. Respondents contended that Assembly Bill 189 (AB) mandates an open hearing before closing the Career Technical Education portion of the Adult Education department. The District is closings this portion of its Adult Education program, but not its

High School Diploma General Education Program and its English as a Second Language, both programs of the Adult Education department. A fair reading of the AB indicates that it is intended as a condition precedent to the "receipt of funds," rather than as a required condition precedent to reductions in force.

Respondent Matthew Labbe

13. Matthew Labbe (Labbe) was hired on April 18, 1994. Labbe contended that his date of hire should also be his seniority date. The District contended that Labbe was initially hired as a substitute teacher and did not work a sufficient number of hours to change his status to "probationary" until September 9, 1995. In the District's Adult Education section, the District classifies a teacher as an FTE if the teacher works 20 hours per week. The District classifies an Adult Education Administrator and a Secondary Teacher/Administrator as an FTE if the employee works 40 hours per week. An Adult Education teacher, as is Labbe, is classified as "probationary" if he/she works 12 hours or more per week. If the teacher works less than 12 hours, he/she is classified as "temporary." Labbe contended, and established, that he was not given written notice that he was being hired as a temporary employee at the time he was hired. Labbe also contended that case law supports his contention that because he was not notified that he was being hired as a temporary employee, he should therefore be classified as "probationary" from his date of hire, which would change his date of seniority to April 18, 1994. The District acknowledged Education Code sections 44954, 44915, and 44916, as well as recent case law. However, the District contended that Education Code section 44929.25 is more specific, and applicable, to Adult Education teachers like Labbe.

14. Education Code section 44916 states:

> The classification shall be made at the time of employment and thereafter in the month of July of each school year. At the time of initial employment during each academic year, each new certificated employee of the school district shall receive a written statement indicating his employment status and the salary that he is to be paid. If a school district hires a certificated person as a temporary employee, the written statement shall clearly indicate the temporary nature of the employment and the length of time for which the person is being employed. *If a written statement does not indicate the temporary nature of the employment, the certificated employee shall be deemed to be a probationary employee of the school district, unless employed with permanent status. (Emphasis added.)*

15. Education Code section 44929.25 states:

> When a teacher of classes for adults serves sufficient probationary time as provided in Sections 44929.20 to 44929.23, inclusive, and Section 44908 to be eligible for election to permanent

> classification in that district, his or her tenure shall be for the service equivalent to the average number of hours per week that he or she has served during his or her probationary years. In no case shall the employee be classified as permanent for more than one full-time assignment. The service for which the person has acquired tenure may be reduced in conformity with Sections 44955 and 44956. Notwithstanding any other provision to the contrary, in a district that has, or in a district that is one of two or more districts governed by governing boards of identical personnel that have a combined average daily attendance of 400,000 or more, as shown by the annual report of the county superintendent of schools for the preceding fiscal year, no person who is assigned 10 hours or less a week in adult classes in the district shall be eligible for election to permanent classification in the district on account of the assignment in adult classes. *Notwithstanding any other provision to the contrary, any person who is employed to teach adults for not more than 60 percent of the hours per week considered a full-time assignment for permanent employees having comparable duties shall be classified as a temporary employee, and shall not become a probationary employee under the provisions of Section 44954. (Emphasis added.)*

16. The District's argument regarding Laffe is convincing. Laffe did not establish that his "seniority date" is incorrect. He did not become a probationary employee until September 9, 1995. Education Code section 44929.25 is directly applicable to Laffe's situation and that section clearly overrides other contrary provisions.

17. All other arguments presented by Respondents were unconvincing and were not established by the evidence. Respondents did not establish that the District did not follow the required procedures or that the District acted in an arbitrary and capricious manner.

CONCLUSIONS OF LAW

1. Jurisdiction for these proceedings exists pursuant to Education Code sections 44949, 44955, and 44929.25.

2. Each of the services set forth in Findings 5 – 10 is a particular kind of service which may be reduced or discontinued in accordance with applicable statutes and case law.

3. The District's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

4. One issue is whether the District may lay off the two DIS counselors'. Neither parth established any minimum standards regarding the employment of these two employees. How the District will fulfill its obligations under local, state, or federal law, or otherwise, in

the upcoming school year is properly determined by the District. Courts have permitted districts to discontinue particular kinds of services as long as the mandated services continue to be performed. (See, e.g., *Gallup v. Alta Loma School District Board of Trustees* (1996) 41 Cal.App.4th 289; *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 639-640.)

5. Cause exists to reduce the District's teaching positions as described above and to give notice to the affected teachers pursuant to Education Code section 44955. (*Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689). Based on the above Findings, including the preamble to this Proposed Decision, the names of the affected teachers, those as to whom final notices of layoff may be given, are as follows:

> All Respondents listed in Exhibits D and E, with the designation "at issue" next to them, with the exception of Respondents Caryn Charles and Nathan Cooke, as to whom the Accusation was dismissed by agreement between the parties.

ORDER

Because of the reductions of services, the District may give notice to the teachers identified in Legal Conclusion No. 5 that their services will not be required for the 2012-2013 school year.

Dated: April ___, 2012.

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CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings